

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH “A” : NEW DELHI)**

BEFORE SHRI MAHAVIR SINGH, HON’BLE VICE PRESIDENT
AND
SHRI MANISH AGARWAL, HON’BLE ACCOUNTANT MEMBER

ITA No. 1159/Del/2024
Asstt. Year : 2015-16

AMIT GOYAL HUF, M-59, GREATER KAILASH-II, NEW DELHI – 110 048 (PAN: AALHA3711R) (Appellant)	VS.	INCOME TAX OFFICER, WARD 30(1), CIVIC CENTRE, NEW DELHI (Respondent)
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Appellant by : Shri Lalit Mohan, CA
Respondent by : Shri Krishna Kumar Ramawat, Sr. DR

Date of Hearing	03.12.2025
Date of Pronouncement	16.02.2026

ORDER

PER MAHAVIR SINGH, VICE PRESIDENT :

This appeal has been filed by the Assessee is emanating from the order of the Ld. NFAC order dated 31.1.2024 in Appeal No. CIT(A), Delhi-10/10352/2017-18. Assessment was framed by the ITO, Ward 30(1), New Delhi dated 30.12.2017 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred the Act) relevant for the assessment year 2015-16. The following is the solitary ground of appeal raised by the assessee:-

“That on the facts and in the circumstances of the case and in law the Ld. NFAC has erred in confirming the action of the AO in denying the exemption claimed u/s. 10(38) amounting to Rs. 1,16,65,248/- in respect of Long Term Capital Gain earned on sale of shares of M/s HPC Biosciences Ltd., by alleging that the share transactions are not genuine and has

confirmed the action of the AO by taxing the same u/s. 68 of the Act.”

2. The brief facts of the case are that the assessee e-filed return of income for the assessment year 2015-16 declaring income of Rs. 3,80,350/- The case was selected for scrutiny and notices u/s. 143(2) and 142(1) were issued from time to time and the assessee had furnished the required information. During the course of assessment proceedings, the AO noticed that the assessee had declared LTCG of Rs. 1,16,65,248/- and claimed exemption u/s. 10(38) of the Act. The AO completed the assessment by disallowing the exemption u/s. 10(38) of the Act amounting to Rs. 1,16,65,248/- and also making an addition of Rs. 3,49,957/- being 3% commission on LTCG, by treating the share transactions as bogus. Against the above, assessee preferred the appeal before the Ld. CIT(A), who vide his order dated 31.1.2024 has partly allowed the appeal of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

3. Ld. AR for the assessee submitted that Ld. NFAC has erred in confirming the action of the AO in denying the exemption claimed u/s. 10(38) amounting to Rs. 1,16,65,248/- in respect of Long Term Capital Gain earned on sale of shares of M/s HPC Biosciences Ltd., by alleging that the share transactions are not genuine and has confirmed the action of AO by taxing the same u/s. 68 of the Act, by ignoring the various judicial authorities relied by the Assessee. He further submitted that Ld. CIT(A) ignored the explanations and the evidences comprising of purchase bill of shares, allotment advice for issue of bonus shares, D-mat statement, contract notes, and share certificates alongwith memorandum of transfer purchase of shares and bank statement showing receipt / payment of account payee cheque for purchase and sales both, and other evidences fully explaining the Long Term Capital Gains. He further submitted that

CIT(A) has wrongly confirmed the addition of Rs. 1,16,65,248/- when the AO has arbitrarily relied upon the report of Investigation Wing of the Income Tax Department and the statement of various parties (third party) recorded u/s. 131 of the Act without appreciating the fact that the name of the assessee is nowhere appearing in the statement recorded u/s. 131 and every transaction carried out in the shares of M/s HPC Bio Sciences Ltd. cannot be considered to be non-genuine. He further submitted that the Ld. First Appellate Authority has not considered the order issued by SEBI vide dated 6.9.2017 wherein, it has been held that on completion of investigation proceedings, no violation of SEBI Regulation were observed in the case of the assessee (appearing at Serial NO. 14 of the aforesaid order) and since SEBI has revoked the charges initiated against the assessee, therefore, there is no reason to doubt the genuineness of the transaction carried out by the assessee in the shares of M/s HPC Bio Sciences Ltd. He further submitted that Ld. CIT(A) by relying upon the statement given by various parties who were alleged to be entry operators and both the lower authorities have not provided any opportunity to cross examine the aforesaid parties and therefore, the statement given by the aforesaid parties is nonest in law and cannot be relied upon. It was further submitted that Ld. CIT(A) by relying upon the list of share brokers provided by the AO in the assessment order though whom non-genuine transaction of shares of M/s HPC Bio Sciences Ltd. were carried out. The Ld. CIT(A) ignored the fact that the assessee has carried out the transactions of sale of Shares of M/s HPC Bio Sciences Ltd. through M/s Pace Stock Broking Pvt. Ltd. which is a renowned broker of India and also the name of the aforesaid broker has not been mentioned in the Investigation Report of the Income Tax Department. He further submitted that the lower authorities have not appreciated the fact that the shares were duly purchased by way of account payee cheque by the assessee in

December 2012/ January, 2013 and the public issue of shares took place in March, 2013 and the capital appreciation in shares price after public issue is very common and therefore, the transaction carried out by the assessee cannot be considered as non-genuine. In view of the aforesaid discussions, it is submitted that the transaction of investment and disinvestment of shares M/s HPC Biosciences Ltd. has been duly accepted by the tribunal and therefore, allowed consequential exemption of Long Term Capital Gain u/s. 10(38) of the Act in ITA No. 752/Del/2024 dated 20.12.2024 in the case of Reena Kumari vs. ITO, a copy of decision has been placed at page no. 171-179 of the APB, which may kindly be followed in the instant case and accordingly, appeal of the assessee may be allowed.

4. Per contra, Ld. Sr. DR relied upon the orders of the authorities below. He submitted that investigation carried out by the Investigation Wing, Delhi as well as Investigation Wing, Kolkata and admission of purchaser of shares, modus operandi, disclosed by the persons namely Shri Atul Jalan, Shri Anil Aggarwal, Shri Vivek Jain, Shri Deepak Aggarwal that they have received the cash and transferred into the account of the buyers, admission of the sharebrokers that the accounts was not opened by the same persons in whose name account was maintained but was opened and operated by the persons Shri Vinod Garg and others, statement of Shri Vikas Surekha. Hence, the AO has rightly observed that it was a sham and bogus transaction and gain received by Shri Amit Goyal, HUF is non-genuine. He further submitted that each of the circumstantial evidence independently indicates that the LTCG earned by the assessee is not genuine and when these are viewed cumulatively alongwith statements of entry operators there is very high preponderance of probability of the LTCG of the assessee to be non-genuine. Hence, the

addition made by the AO was rightly sustained by the CIT(A), which does not need any interference.

5. We have heard the rival contentions and perused the records. We find that AO denied the exemption claimed u/s. 10(38) amounting to Rs. 1,16,65,248/- in respect of Long Term Capital Gain earned on sale of shares of M/s HPC Biosciences Ltd., by alleging that the share transactions are not genuine and Ld. CIT(A) has confirmed the action of AO by taxing the same u/s. 68 of the Act. We find that assessee purchased 10000 shares of HPC Bioscience Limited vide invoice dated 29.12.2012, a copy of same has been placed at Page No. 32 of the Assessee's Paper Book (APB) from M/s All Time Buildtech Pvt. Ltd. and share certificate for the same has been issued, a copy of same is placed at page nos. 33-34 of APB). It is noticed that assessee received a bonus of 10000 shares vide letter dated 05.01.2013, copy placed at page no. 35 – APB and share certificate for the same has been issued, a copy thereof is placed at page no. 36-APB. It is further noted that shares were transferred to Demat a/c on 04.09.2013 and balance as on 17.04.2014 is 20000 equity shares, a copy of transaction statement placed at page no. 25-APB. It is observed that the assessee sold shares of 19200 M/s HPC Bioscience Limited as evident from demat transaction statement as well as from contract notes dated 21.04.2014, copy thereof placed at page 37-APB and dated 29.04.2014 at page no. 38-APB and claimed exemption u/s 10(38) of the Act amounting to Rs. 1,16,65,248. With regard to the said addition of Rs. 1,16,65,248/- which representing gain on sale of equity shares through recognized stock exchange on account of credits in the bank and taxed u/s 68 of the Act consequently denying the exemption of long-term capital gain claimed as exempt u/s 10(38) of the Act is concerned, it is noted that during the instant year the assessee has earned long term capital gain of Rs.

1,16,65,248/- on sale of 19200 shares of M/s HPC Biosciences Ltd. and by virtue of section 10(38) of the Act, the same has been claimed as exempt income by the assessee. We noted that the assessment order is based on the report of investigation wing and nowhere name of the assessee is reflected therein.

5.1 It is further noticed that during the instant year the assessee has sold 19200 shares of M/s HPC Biosciences Ltd. at Rs. 1,17,61,248/- on which assessee had earned long term capital gain of Rs. 1,16,65,248/- and by virtue of section 10(38) of the Act, the same has been claimed as exempt income by the assessee. It is also noted that assessee had sold shares through online trading platform after payment of Security Transaction Tax (STT), which was undertaken on 21.04.2014 and 29.04.2014 in compliance with clause (a) of section 10(38) of the Act by the assessee. It is further observed that the said shares were sold by the assessee through M/s PACE STOCK BROKING SERVICES PVT. LTD. (Broker firm) by online trading platform of Bombay Stock Exchange and all the taxes i.e. Securities Transaction Tax, Service Tax, Brokerage, and other charges have been duly paid on each and every sale transaction. The entire transaction was executed as per normal share trading procedure prescribed by the SEBI and/or BSE. The transaction of sale of shares of M/s HPC Biosciences Ltd. is duly evidenced by various documents/evidences viz. copy of contract notes for the sale of 19200 shares, copy of the same is placed at page nos. 37-38 of the APB. It is settled law that no addition can be made on the basis of doubts and suspicion, however, in the present case the purchase/sale of shares is duly supported by the documentary evidences, the STT is duly paid at the time of transaction of sale of shares and further the sale of shares was undertaken through recognized stock exchange. It is further noted that Assessing Officer failed to appreciate that, transaction

carried out through Stock Exchange are without any physical interaction between buyer and seller, therefore no adverse inference is liable to be drawn in case parties who had purchased shares admitted to being entry operators. We note that Assessing Officer failed to take cognizance of the fact that, in case of online trading unlike physical trading, there is no interaction between sellers and buyers of securities, hence no negative inference is liable to be drawn merely because the appellant could not provide any information in respect of the buyer of the said securities, as he himself did not have any information about the same. Also the increase in the price of the scrip cannot be a valid reason to doubt the genuineness of the transactions and consider it as 'dubious' or "bogus". Assessing Officer cannot assess the income without analyzing the supporting evidences and simply cannot assume the transactions to be bogus merely on the basis of increase in price of share. It is observed that disinvestment of shares was duly supported by official quotation of Bombay Stock Exchange and the fact that the transaction were through demat account is in itself evidence to prove the genuineness of share transaction. It is settled law that merely because the sale of shares fetched a handsome price, which price is supported by official quotation cannot be any reason to doubt the genuineness of the sale transaction of the shares, where assessee has clearly established genuineness of the share transaction and has sufficiently discharged the onus cast upon him, no addition is thus warranted. We note that Assessing Officer has referred and relied on the list of penny stocks of income tax department and the admissions of entry operators in the sworn statement recorded during the course of search and seizure operations., which were neither referred in the assessment order nor confronted or supplied to assessee during assessment proceedings and even the assessee was not given any opportunity to cross examine the said persons who have given their statements, which is against the spirit of settled law.

5.2 We further find that the similar transaction of investment and disinvestment of shares M/s HPC Biosciences Ltd. has been duly accepted by the Delhi Tribunal wherein, similar claim of another assessee was allowed viz. consequential exemption of long term capital gain u/s. 10(38) of the Act in the case of Reena Kumari vs. ITO passed in ITA No. 752/D/2024 dated 20.12.2024, wherein, it has been observed as under:-

6. *“Then as with regard to the allegation of the assessee that the A.O has relied upon certain statements and documents while making the impugned additions in the assessment but they were not provided to the assessee neither an opportunity of cross examination was afforded to the assessee. We find that the ground was raised before CIT (A), who in remand proceedings, directed the A.O to provide the relevant documents to the assessee and give an opportunity to cross examine. It is a matter of record that the A.O. accepted that the relevant material was not provided to the assessee during the Assessment and then the A.O. in his remand report has mentioned that he sent all the statement by post to the assessee on the Address mentioned in the ITR for AY 2018-19. In this regard, it is submitted by the Id. AR that the address of the assessee was changed and the same was updated in PAN records. Same is certainly established by copy of return available on Page60-61 of the Paper book and the said documents should have been sent on the address as per PAN records with NSDL. Then we find that AO forwarded these documents to CIT(A) along with Remand Report with the observations that these documents relied by AO could not be provided to the assessee yet CIT (A) failed to share these documents with the assessee during appellate proceedings. Thus, no doubt certain principle of natural law are violated but we have to examine the issue on merits and then consider that how far absence of this opportunity cross examination of witness or non-provision of documents was prejudicial to the assessee.*

7. *As with regard to the merits of case Id. AR submitted that the assessee was not a part of any sham transaction which is also evident by the investigations conducted by the Securities and Exchange Board of India. According to Id. AR, the assessee was specifically given a clean chit in that investigation.*

8. *Now as matter of fact the Assessee acquired 100000 (One Lakh) Pre IPO Equity Shares of HPC Biosciences Limited @10/- per share for Rs. 10,00,000/-(Rupees Ten Lakh Only) on 04.02.2013 from AMS*

Powertronics Private Limited vide account payee Cheque No. 540577 dated 04.02.2013 drawn on Punjab National Bank and got the shares transferred in her name on 16.02.2013. The said shares were lodged for dematerialization and were dematerialized on 16.03.2014 with NSDL. The company's IPO was listed on BSE SME Segment on 19.03.2013 at an issue price of Rs. 35/- which opened at Rs. 37.25/- and closed at 39.10/- .The assessee sold these shares starting from 27.03.2014 to 11.07.2014 at around Rs. 540 to Rs. 569 however, the price even went up to Rs. 735.90/-

8.1 The claim of assessee is that she invested in these shares owing to the luring future plans of the company which was in the sector of Organic farming and horticulture activities. The assessee was guided by her son, Jagat Singh and sub broker, Mr. Subodh Kumar Jain that growing consumer's concerns on food safety, health and environment in recent decade has resulted increased demand for organic food across the world. Awareness and knowledge has become a crucial factor in changing the attitude and behavior of consumers towards organic foods, which in turn drives the growth in the organic food market. Considering the health benefits of organically produced food, and knowledge of the damage done to the environment by conventional, intensive farming methods and tremendous growth in market of organic food over the past decade.

9. *We find, and as rightly pointed by the Ld.DR also that heavy reliance is placed by the Assessing officer on Kolkata Investigation Report, Weak Financials of the Company, SEBI Orders, Orders of different courts mother cases. The Assessing Officer mentioned upon general modus operandi as alleged by the Kolkata Investigation Report in the cases where bogus LTCG is claimed. The A.O has drawn a negative inference from the fact that the M/s. Sunstar Realty Development Limited, HPC Biosciences Limited and AMS Powertronics Limited have not complied with the notices issued under section 133(6) of the Act.*

9.1 *Ld. AR has submitted that non-compliance by any third party over which the Assessee is not having any control, cannot be used against the Assessee. It is pertinent to mention herein that the Assessee was also served with notice under section 131 of the Act, to which proper compliance was made, and the statement of the Assessee was duly recorded which is there on page number 6 to 11 of the Assessment Order. Ld. AR referred to relevant questions to suggest that due explanation was given about reasons for investment.*

10. *Now we find that most vital piece of material on record are the SEBI orders as the same have substantial bearing on the issue*

about transaction in a share being suspicious or otherwise tainted. What is established is that by SEBI order 29.06.2015, Para 50 page 401, direction were passed against the assessee restraining her from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions, name of the Assessee is at point 64- page number 404. Then by SEBI order dated 17.02.2016 [Page No. 208 to 217 of PB], directions passed in Order dated 29.06.2015 were confirmed and the name of the assessee is at Serial Number 40 at Page 215 of the Paper book. It is pertinent to note that this Order was passed as the assessee failed to file its objections before the SEBI. Then by SEBI Order dated 25.08.2016 [Page No. 261-367 of PB], is the confirmatory order against the remaining 107 entities. However, vide SEBI Order dated 06.09.2017 [Page No. 48 to 58 of PB; Relevant Para 3 & 4 at Page Number 53 of PB], the directions passed against the assessee vide Order dated 29.06.2015 and confirmed vide Order dated 17.02.2016 were revoked after a detailed investigation by the SEBI. assessee's name is at serial number 31, Page number 54. Relevant Para is reproduced herein below:

3. The directions issued vide the ad interim ex parte order dated June 29, 2015 read with Corrigendum Order dated January 04, 2016 were confirmed vide orders dated February 17, 2016, June 14, 2016, August 25, 2016, October 27, 2016 and June 15, 2017 except for certain specific reliefs provided to certain entities.

4. Subsequent to the interim orders, an Investigation was carried out to look into the role of debarred entities in price manipulation and IPO manipulation of the scrips. Upon completion of investigation, violation of provisions of SEBI Act, 1992 (SEBI Act) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) are not observed in respect of following 216 entities against whom directions were issued vide the interim orders. The details of the entities against whom the prima facie findings are not observed in the Investigation report are as under:"

11. Further what is relevant is the SEBI Order dated 22.12.2020 [Page No. 218-260 of PB], by which SEBI has drawn conclusion about the nature of irregularities in subscription of the IPO of HPC Biosciences Limited wherein it was found that 29.03% of the allotment in the IPO was to the entities funded by the Funding group. We find substance in

the contention of Ld. AR that these proceedings have nothing to do with the assessee, these are independent proceedings against the HPC Biosciences Limited and other entities for violation of SEBI regulations. No conclusion was drawn that the scrip was traded as a penny stock and the investors had in any way been privy to transactions giving rise to bogus appreciation and gains.

12. Now coming to investment and LTCG in Sunstar Realty Development Ltd. The Assessing Officer made the addition for the reason that the company was not having healthy financials. However, AO himself has noted that this company was having a positive book value and is a profit making company. There is substance in the contention of Id. AR that nothing conclusive was brought on record by the Ld. A.O against the Assessee rendering the trades placed as sham. Ld. CIT (A) in para 11.1 of his Order at Page 22 recorded that the AO has delved deep and findings of the SEBI in the cases of HPC Biosciences and Sunstar Realty Development Limited have been elaborately discussed in the Assessment Order. However, there was no SEBI investigation Order in the matter of Sunstar Realty Development Limited at the time of Assessment. SEBI passed an order dated 19.03.2021 [Page No. 448-494 of the Paper book] wherein it has found price manipulations in this scrip. It is pertinent to mention that the said investigation was for the period of 26.11.2013 to 03.06.2015 [Refer Page 449 Para 1]. In Para 2 of the same, this period is divided into 5 patches, and in this investigation only Patch 3 [23.10.2014 to 15.12.2014] and Patch 5 [01.01.2015 to 03.06.2015] were examined wherein it was, inter alia, noticed that the price of the scrip of the Company was manipulated. It is pertinent to note that the Assessee sold its shares of Sunstar Realty Development Limited from 10.04.2014 to 08.07.2014 [Refer Page Number 18 of the Paper book], Therefore, virtually there is no finding, direct or indirect, by the SEBI against the assessee.

13. After taking into consideration the orders of the Id. tax authorities below, we are of the considered view that the Id. AO has primarily gone on the broad parameters of analyzing transactions of bogus LTCG claims. The conclusions were more outcome of the Investigation Wing report and the SEBI orders than anything specific discovered by any independent investigation or enquiry of the AO, except for recording statements of assessee u/s 131 of the Act and of one Shri Sumit Kumar, the director of AMS Power Tronics Ltd. The assessee has been faulted by questioning the reasons for investments which is not an appropriate manner to discharge the burden on the AO for establishing that the assessee has taken recourse to invest only for generating an exempt LTCG. The statement of Shri Sumit Kumar, the director of AMS Power Tronics Ltd. from whom the assessee has bought the shares was

relied heavily without the assessee being given an opportunity to cross-examine. Pertinent to mention is that even the CIT(A) failed to give the assessee the opportunity in spite of the assessing officer referring the matter in that context to the CIT(A). Non provision of statement and absence of opportunity for cross- examination is sufficient to draw an adverse inference and setting aside the conclusions drawn out of the statement of Shri Sumit Kumar. The AO has discredited the explanation of the assessee being general in nature. However, the findings and reasoning of the AO are patently very general. No doubt, the test of preponderance of probability would be applicable, but, that would be on the basis of some evidence indicating that some colorable device was used for introduction of unaccounted money through the LTCG Claim. The financials of the two scrips or the movement in the prices are indeed relevant, but cannot alone be relied for considering the investment to be motivated for preparing false LTCG claim.

14. *The Id. counsel for the assessee has rightly relied the fact that for AY 2013-14 in case of another assessee Jagat Singh, proceedings u/s 148A(d) of the Act were initiated for making inquiry arising out of investments in Sunstar Realty Development Ltd. scrip and the assessment was completed by order dated 11.01.2023 without any variation. The Id. counsel has also sufficiently distinguished the facts of the case of Sangeeta Devi Jhunjhunwala v. Income-tax Officer ITA No.747/Del/2022/[2023] 152 taxmann.com 348/202 ITD 165(Delhi - Trib.) relied by the Ld.CIT(A) in the case of HPC Biosciences Ltd. scrip. In that case, that assessee was preferential allottee who was allowed bonus shares on the same date. Furthermore, we also find that the coordinate Bench while dealing with the case of Sangeeta Devi Jhunjhunwala (supra) did not have benefit of the fact that of SEBI proceedings and directions wherein the assessee was exonerated from any alleged act of manipulation of the prices for achieving LTCG, like the assessee before us. In that case, even after issuing notices u/s 131 of the Act, that assessee had failed to appear while in the case before us the assessee appeared and deposed on oath the reasons and circumstances for making the investments. We are of the considered view that when an assessee deposes on oath giving explanation of the reasons and circumstances for investment, the same cannot be brushed aside on the basis of general principles of the modus operandi of bogus LTCG claims.*

15. *In the light of the aforesaid, we are inclined to accept the grounds of appeal of the assessee holding that Ld. tax authorities below have fallen in error in considering the LTCG claim of the assessee from the two disputed scrips as bogus claim. The appeal of the assessee is allowed with consequences to follow.”*

6. Keeping in view the aforesaid discussions and background of the case and respectfully following the precedent as cited above, we delete the addition of Rs. 1,16,65,248/- and accordingly, allow the ground raised by the Assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 16.02.2026.

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER
SRBhatnagar

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Date: 16-2-2026

Copy forwarded to: -

1. Appellant
2. Respondent
3. DIT
4. CIT (A)
5. DR, ITAT

By Order,

Assistant Registrar, ITAT,
Delhi Bench